

REMARKS

Claims 1-18 are currently pending in the present application. Claim 19 was previously cancelled. Claims 1, 3, 5 and 18 have been amended.

Claims 1, 5 and 18 have been amended to recite that the upper magnet is configured to abut an interior surface of the upper esophageal sac. Claims 3, 5 and 18 have been amended to recite that the lower magnet is configured to abut an interior surface of the lower esophageal sac. Claim 1 has also been amended to recite that the upper magnet is configured to apply an approximating force to the upper esophageal sac so as to approximate the upper esophageal sac with the lower esophageal sac. Claim 3 has been amended to recite that the lower magnet is configured to apply an approximating force to the lower esophageal sac so as to approximate the upper esophageal sac with the lower esophageal sac.

Support for the amendments may be found throughout the specification, for example, in paragraphs 0010, 0011, 0012, 0013, 0020, 0030 and 0031. No new matter has been added in this Amendment.

Substance of the Interview

Applicants kindly thank the Examiner for the opportunity to discuss the issues in this case.

A telephonic interview was held on May 10, 2006 with Examiner Koharski and Heidi Dare. No exhibit was shown and no demonstration was conducted, but a set of proposed amended claims were discussed. Prior art reference U.S. Patent No. 3,986,493 to Hendren, III was also briefly discussed.

Amendments to the pending independent claims were discussed during the interview. No agreement was reached with respect to each of the claims. The objections made to claim 8 were also discussed.

Claim Rejections

A. Claim Rejections under 35 U.S.C. § 102(e)

Claims 1-6 and 10 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Kane et al. (U.S. 6,985,776). Applicants have provided a discussion of the relevance of the Kane et al. reference. However, Applicants do not want the discussion of the Kane et al. reference to be construed as an admission that the

reference is prior art. Applicants reserve the right to later provide arguments as to the whether the Kane et al. reference is prior art.

According to the Examiner, Kane et al. discloses a device that has an elongate first and second member that contains a magnet that is capable of being placed into a variety of body areas such as the upper and lower esophageal sac.

Applicants respectfully traverse the Examiner's rejection based on Kane et al. Applicants respectfully request reconsideration of the rejected claims in light of the claim amendments and the traversals discussed below.

Kane et al. discloses techniques for coronary sinus cannulation where cardiac leads are placed in the great vein proximate the left ventricle. (Col. 1, lines 46-50.) It is clear from the background and the detailed description of Kane et al. that the methods disclosed relate to placement of cardiac leads in the heart. A steerable catheter and a guidewire are introduced into the right atrium of the heart. The distal tip of the guidewire engages the distal tip of the catheter when the catheter and guidewire are introduced in to the right atrium. A sheath is introduced over the guidewire to cannulate the coronary sinus. Upon deployment of the sheath, the guidewire is withdrawn and a cardiac lead is inserted in its place. Ultimately the sheath is withdrawn, leaving the cardiac lead in place within the coronary sinus. The guidewire or the catheter or both may rely on magnetic engagement. (See Col. 1, line 56-Col. 2, line 8.) Kane et al. discusses implanting a lead within the patient using a catheter and a guidewire which may be magnetic. The magnetic portions of the catheter and guidewire are only used for directing the cardiac lead to the lead implantation position in a coronary sinus. Kane et al. does not teach or suggest an upper or a lower magnet configured to abut an interior surface of the upper or lower esophageal sac, respectively. Kane et al. also does not teach or suggest that the magnets are configured to apply an approximating force to the esophageal sacs so as to approximate the upper esophageal sac with the lower esophageal sac.

In contrast, Applicants' newly amended claims 1 and 5 require that the upper magnet is configured to abut an interior surface of the upper esophageal sac. Newly amended claim 3 requires that the lower magnet is configured to abut an interior surface of the lower esophageal sac. Applicants' claimed invention, claiming upper and lower magnets configured to abut an interior surface of the upper and lower esophageal sac, respectively, are clearly not taught by Kane et al.

Claims 2 and 4 depend from newly amended claims 1 and 3, respectively.
Claims 6 and 10 depend from newly amended claim 5.

Thus, Applicants respectfully assert that the claimed invention is not anticipated by Kane et al. Applicants respectfully request the rejection of claims 1-6 and 10 under 35 U.S.C. §102(e) be withdrawn.

B. Claim Rejections under 35 USC §103

1. Claims 7 and 8

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kane et al. in view of Rudie (U.S. 3, 771,526). According to the Examiner, Rudie teaches an anastomosis clamp wherein the two engaging means are shaped in multiple ways to engage themselves.

Applicants respectfully traverse the Examiner's rejection based on Kane et al. in view of Rudie since the references alone or in combination fail to teach or suggest a medical device including a magnet configured to abut an interior surface of an upper or lower esophageal sac. Kane et al. in view of Rudie also fail to teach or suggest that the upper magnet and the lower magnet are configured to apply an approximating force to the esophageal sacs so as to approximate the upper esophageal sac with the lower esophageal sac. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the cardiac lead of Kane et al. with the anastomosis clamp of Rudie as required by § 103.

Rudie teaches an anastomosis clamp including a first clamping collar, a second clamping collar, a support rod connected to the first collar and means for urging the clamping collars together. The second collar includes a support member slidable on the support rod. The opposed edges of the collar include undulations that mate. (Abstract.) Rudie clearly does not teach or suggest a magnet that is configured to abut an interior surface of an esophageal sac and have a constant magnetic force.

As discussed above, Kane is directed to method of implanting a cardiac lead. Kane et al. does not teach or suggest an upper or a lower magnet configured to abut the upper or lower esophageal sac, respectively. Kane et al. also does not teach or suggest that the upper magnet and the lower magnet are configured to approximate the upper esophageal sac and the lower esophageal sac.

In contrast, Applicants' claimed invention in claims 7 and 8 require an upper magnet and a lower magnet wherein the upper magnet and the lower magnet are configured to abut an interior surface of the upper and lower esophageal sacs respectively, and to approximate the upper and lower esophageal sacs. Kane et al. fails to teach or suggest the claimed invention in claims 7 and 8 as discussed above and Rudie cannot make up the deficiencies of Kane et al.

Therefore, Applicants respectfully request that the rejection of claims 7 and 8 under 35 U.S.C. §103(a) be withdrawn.

2. Claims 9, 11-14, and 18

Claims 9, 11-14 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kane et al. in view of Anderson (U.S. 4,244,362). According to the Examiner, Anderson teaches an endotracheal magnetic control device.

Applicants respectfully traverse the Examiner's rejection of claims 9, 11-14 and 18 based on Kane et al. in view of Anderson since the references alone or in combination fail to teach or suggest a medical device including a magnet configured to abut an interior surface of an upper or lower esophageal sac. Kane et al. in view of Anderson also fail to teach or suggest that the upper magnet and the lower magnet are configured to approximate the upper esophageal sac and the lower esophageal sac. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the cardiac lead of Kane et al. with the endotracheal tube control device of Anderson as required by § 103.

Anderson discloses a magnetically controllable stylet for assisting in the insertion of an endotracheal tube. The stylet has a first magnetic means attached to one end of the stylet. A second magnet means is provided for external placement over the tracheal orifice of a patient. (Abstract.) As shown in FIG. 5, the external magnet 41 is placed exteriorly in the midline adjacent to the prominence of the thyroid cartilage, or "Adam's Apple". (See Col. 6, lines 34-36.) Anderson fails to teach or suggest an upper magnet or a lower magnet that is configured to abut an upper or lower esophageal sac.

As discussed above, Kane et al. does not teach or suggest an upper or a lower magnet configured to abut an interior surface of the upper or lower esophageal sac, respectively.

In contrast, as discussed above, Applicants' claimed invention in claims 9, 11-14 and 18 require an upper magnet and a lower magnet wherein the upper magnet and the lower magnet are configured to abut an interior surface of the upper and lower esophageal sacs, respectively. Kane et al. fails to teach or suggest the claimed invention in claims 9, 11-14 and 18 and Andersen cannot make up the deficiencies of Kane et al.

Therefore, Applicants respectfully request that the rejection of claims 9, 11-14 and 18 under 35 U.S.C. §103(a) be withdrawn.

3. Claims 15-16

Claims 15-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kane et al. in view of Mager et al. (U.S.2003/01360610). According to the Examiner, Mager et al. teaches a catheter with a plurality of ports.

Applicants respectfully traverse the Examiner's rejection of claims 15-16 based on Kane et al. in view of Mager since the references alone or in combination fail to teach or suggest a medical device including an upper magnet or a lower magnet configured to abut an interior surface of the upper esophageal sac and the lower esophageal sac, respectively. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the cardiac lead of Kane et al. with the aortic balloon catheter of Mager as required by § 103.

Mager discloses a multi-lumen aortic balloon catheter for blocking the ascending aorta and delivering blood in a heart-surgery patient. (Paragraph [0002].) Mager fails to teach or suggest an upper magnet configured to abut an interior surface of an upper esophageal sac or a lower magnet configured to abut an interior surface of a lower esophageal sac.

As discussed above, Kane et al. does not teach or suggest an upper or a lower magnet configured to abut an interior surface of the upper or lower esophageal sac, respectively.

In contrast, as discussed above, Applicants' claimed invention in claims 15-16, depending from newly amended claim 5, require an upper magnet and a lower magnet configured to abut an interior surface of an upper and a lower esophageal sac, respectively. Kane et al. fails to teach or suggest the claimed invention in claims 15 and 16 and Mager et al. cannot make up the deficiencies of Kane et al.

Therefore, Applicants respectfully request that the rejection of claims 15-16 under 35 U.S.C. §103(a) be withdrawn.

4. Claim 17

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kane et al. in view of Auzin (U.S. 2,308,484). According to the Examiner, Auzin teaches the use of a band placed on the balloon to additionally secure the balloon end and reinforce the assembly elements.

Applicants respectfully traverse the Examiner's rejection of claim 17 based on Kane et al. in view of Auzin since the references alone or in combination fail to teach or suggest a medical device including an upper magnet and a lower magnet configured to abut an interior surface the upper esophageal sac and the lower esophageal sac, respectively. Furthermore, Applicants respectfully assert that there is no suggestion in either reference to combine the cardiac lead of Kane et al. with the catheter of Auzin as required by § 103.

Auzin discloses a method of manufacturing inflatable catheters and catheters having stronger inflatable balloon sections and reinforced ends. (Col. 1, lines 1-15.) Auzin fails to teach or suggest a medical device including an upper magnet or a lower magnet configured to abut an interior surface of the upper esophageal sac and the lower esophageal sac, respectively.

Kane et al. has been discussed above

In contrast, as discussed above, Applicants' claimed invention in claim 17, depending from newly amended claim 5, requires a medical device including an upper magnet or a lower magnet configured to abut an interior surface the upper esophageal sac and the lower esophageal sac, respectively. Kane et al. fails to teach or suggest a medical device including an upper magnet or a lower magnet configured to abut an interior surface of the upper esophageal sac and the lower esophageal sac, respectively, and Auzin cannot make up the deficiencies of Kane et al.

Therefore, Applicants respectfully request that the rejection of claim 17 under 35 U.S.C. §103(a) be withdrawn.

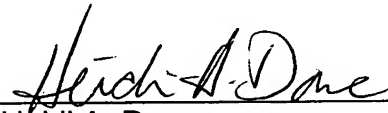
Application Serial No. 10/802,555
Response dated August 24, 2006
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SUMMARY

Having carefully addressed all the objections and rejections of the Examiner in the June 27, 2006 Office Action, it is respectfully asserted that the claims properly define the invention and that the invention is both novel and non-obvious. Allowance of the present claims is earnestly solicited.

Applicants respectfully request that the Examiner call the undersigned with any questions regarding this response to expedite the prosecution of the application.

Respectfully submitted,

A handwritten signature in cursive script, reading "Heidi A. Dare", written over a horizontal line.

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